

Ex C to Decl of McCallion

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HEARING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AEDES DE VENUSTAS, INC.,

Plaintiff,

v.

07 CV 4530 (LTS)

VENUSTAS INTERNATIONAL, LLC,

Defendant.

-----x

New York, N.Y.
July 13, 2007
9:55 a.m.

Before:

HON. LAURA TAYLOR SWAIN,

District Judge

APPEARANCES

JOSEPH MICHAEL HEPPT
Attorney for Plaintiff

MATHEWS, SHEPHERD, MCKAY & BRUNEAU, P.A.
Attorneys for Defendant

BY: ROBERT GEORGE SHEPHERD

TAYLOR, COLICCHIO & SILVERMAN, LLP
Attorneys for Defendant

BY: PHILIP M. COLICCHIO

ALSO PRESENT: KARL BRADL
ROBERT GERSTNER
SAM GHUSSON

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Ghusson - direct

1 A. Before we have this team?

2 Q. Yeah, before you have the teams go to work.

3 A. We have clients before the -- I'm not sure about the
4 question. Ask again.

5 Q. Okay. Is the first thing you have to do is to identify the
6 client?

7 A. No. We identify what we need as a structure, as a company
8 to start our company. We hired almost all of them. Some of
9 them were noncompete. We have to wait for until their
10 noncompete expired, and in the same time, we started
11 negotiating with two clients.

12 Q. Okay. And how did you identify the clients that you are
13 going after as your customers?

14 A. When Robin Burns, my partner and I, set up Venustas
15 International, LLC, our business model was that we will pursue
16 two to three clients. They must be perfectly special
17 retailers. They must be in excess of a billion dollars of
18 retail sales. They must be committed to the beauty category
19 and they want to build a beauty category. They must have
20 displayed a growth potential and the leadership is committed to
21 the category.

22 Q. Now, how do you --

23 A. And nice people to work with. I'm sorry.

24 Q. Okay. How do you define a vertical specialty retailer?

25 A. It's the retailer that basically sells their own brand of

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Ghusson - direct

1 anything with their names on it in their stores, so they
2 source, they manufacturer and sell their own product in their
3 own stores.

4 Q. Do you consider the plaintiff Aedes De Venustas to be a
5 specialty retailer?

6 A. I don't, sir.

7 Q. Can you tell me why not?

8 A. Because they sell their own brand as well as others.

9 Q. What about Barneys or Bergdorf Goodman, are they specialty
10 retailers?

11 A. I don't consider them specialty retailers. I consider
12 them -- they're great retailers but not specialty retailers.

13 Q. Why is that?

14 A. They sell a prestige product with great names, but they
15 don't sell only their brand. They sell other brands of
16 products.

17 Q. Can you give me some examples of companies that are
18 specialty retailers, vertical specialty retailers?

19 A. Yes. That would be Ann Taylor. It would be Abercrombie
20 and Fitch. It would be American Eagle, Gap, Banana Republic,
21 Old Navy, as well as others.

22 Q. Now, you said you can only work for three or four of these
23 companies at one time. Why so few?

24 A. Because I believe that if you want to build a business and
25 a business relationship with someone, you can't be for

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Ghusson - direct

1 BY MR. SHEPHERD:

2 Q. How do you get these companies to be your client?

3 THE COURT: Does that conclude the sealed portion?

4 MR. SHEPHERD: Yes, your Honor. I'm sorry.

5 THE COURT: Okay. Thank you.

6 A. Basically they came to us. Both approached us through
7 contacts. I'll start with Hollister. Hollister used to be
8 owned by The Limited, and Victoria Secret was owned by The
9 Limited. Robin was the president of Victoria Secret beauty,
10 Robin Burns my partner. And the chairman of Abercrombie and
11 Fitch, who owns the Hollister stores, also was president and
12 chairman of Abercrombie and Fitch, who knew of Robin. When
13 Robin retired from Victoria Secret, he contacted in an effort
14 to have her work for him, and she told him that she was retired
15 but there might be a possibility in the future that she will
16 start her own company, and he said, when you do, please call
17 me, because I would love to work with you. And that's how we
18 got to Abercrombie and Fitch.

19 As to Ann Taylor, we have a contact at the editor, I
20 believe, of Cosmetic World. Mr. George Ledes is friends with
21 the chairman of Ann Taylor. They were on the golf course some
22 day, and he found out through her that she's interested in
23 developing the beauty business. And she was talking to a third
24 company, and he asked her not to make any decisions till she
25 meets with Robin Burns and her partner. So Robin Burns and I

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Ghusson - direct

1 met with the chairman of Ann Taylor and the president of Ann
2 Taylor and basically presented our expertise to them, and we
3 have an agreement to do production and manufacture for them.

4 Q. Do you do any advertising?

5 A. Absolutely not.

6 Q. Do you have a Web site?

7 A. As of now, we do, yes.

8 Q. When did that Web site go up?

9 A. I believe this week sometime.

10 Q. I'm going to show you a document that I've marked as
11 Defendant's Exhibit B for identification. Can you tell me what
12 that is?

13 A. That is our Web site, my company's Web site.

14 Q. What is the purpose of that Web site?

15 A. The purpose of this Web site is so that if people want to
16 know about our company or reach me or Robin, they know our
17 offices and our locations.

18 Q. You also now have a telephone number in New York City
19 that's listed with directory assistance?

20 A. Yes, I do.

21 Q. How long has that been online?

22 A. We obtained the number two to three weeks ago.

23 Q. Are you aware of any instances where people have called
24 looking for Aedes De Venustas since this telephone number was
25 now listed with directory assistance?

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Ghusson - cross

1 name Venustas International, and I think you testified that
2 there was a process whereby various names were considered. Is
3 that true?

4 A. Yes, sir.

5 Q. And in fact, Venustas International was not the first name
6 that you chose to send to your lawyer to be cleared. Is that
7 correct?

8 A. Yes.

9 Q. What was the name that you sent to your lawyer to be
10 cleared?

11 A. The Pulse, P-u-l-s --

12 Q. Who picked that name?

13 A. My partner Robin Burns McNeil.

14 Q. And the lawyer told you there was a problem with that name.
15 Is that correct?

16 A. He said it wasn't a name that you could register in
17 trademark, because it will give you issues because other people
18 have The Pulse.

19 Q. So other people were using The Pulse in their registered
20 names?

21 A. Correct.

22 Q. And then you went to your, I guess, second choice, Venustas
23 International. Correct?

24 A. Yes, sir.

25 Q. Now, before you sent that second name Venustas

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Ghusson - cross

1 International to the lawyers, did you bother to Google the name
2 Venustas International?

3 A. No, sir.

4 Q. And if you had Googled Venustas International, you would
5 have found that there was another company called Aedes De
6 Venustas that was already out there in the beauty industry.
7 Isn't that true?

8 A. I would have found that there was an Aedes De Venustas
9 store that sells perfume product in Christopher Street in the
10 Village, and that's not in the business that I'm in.

11 Q. Wouldn't that indicate to you that there was a potential
12 problem with using the name Venustas International?

13 A. No, sir.

14 Q. It would not have indicated to you in any way that there
15 might have been a problem?

16 A. Absolutely not.

17 Q. And you sent the name Venustas International to your
18 lawyer. Correct?

19 A. Yes, sir.

20 Q. Mr. Allen Silk, I believe you told us?

21 A. Allen Silk from Stark & Stark.

22 Q. And he checked the name out, and he said that it was clear?

23 A. He sent me an invoice that says that he cleared the name
24 for our corporate name as well as a trademark, and you have a
25 copy of that.

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Ghusson - cross

1 Q. Would it be fair to say, sir, sitting here today that
2 Mr. Silk made a mistake?

3 A. I would imagine it is if I'm sitting in the courthouse,
4 yeah.

5 Q. Now, in your declaration you talk about the FiFi Awards.
6 Correct?

7 A. Yes, sir.

8 Q. Explain what the FiFi Awards are.

9 A. The FiFi Awards are awards given by the fragrance
10 foundation industry, and basically it's an award for many
11 categories, a specialty mass, prestige, limited distribution
12 and so on for the fragrance they're launching that year.
13 Companies receive awards for the design of the package. They
14 receive an award for the best overall fragrance. They receive
15 an award for the best print advertisement, TV advertisement,
16 many, many categories.

17 Q. It's kind of like the Oscars of the fragrance industry.
18 Correct?

19 A. I would say it is, yes, sir.

20 Q. And it's an honor to be even nominated for a FiFi award.
21 Isn't that true?

22 A. It's an honor to be nominated. It's a bigger honor to win
23 it.

24 Q. Not to belabor the point, but it's an honor to be nominated
25 just as it's an honor to be nominated for an Oscar, because